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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,746	04/20/2004	Jerome J. Kochanski	KOCH-10131	5477
23123 7590 12/10/2008 SCHMEISER OLSEN & WATTS 18 E. UNIVERSITY DRIVE SUITE # 101 MESA, AZ 85201				
EXAMINER MARSH, STEVEN M				
ART UNIT		PAPER NUMBER		
3632				
MAIL DATE		DELIVERY MODE		
12/10/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/828,746

Applicant(s)

KOCHANSKI, JEROME J.

Examiner

STEVEN M. MARSH

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-14, 16-21 and 23-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-14, 16-21 and 23-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This is the third office action for U.S. Application 11/828,746 for a Hold Down Device filed on April 20, 2007. Claims 1-6, 8-14, 16-21, and 23-25 are pending

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. patent 6,068,163 to Kihm. Kihm discloses a device that can function as a hold down device and hold down a flexible discharge hose. There is a container (2) with a top portion, a bottom portion, a front end and a rear end, and a handle (26) for carrying the hold down device. There is a hose recess (receiving 30) comprising a right wall, a left wall, an upper wall (the sidewalls of the container and the top of the container), and the recess extends from the front end to the rear end of the container. The opening is configured to receive a discharge hose and the container is adapted to hold down the discharge hose during draining between the walls and a ground surface. The container is hollow and configured to be filled and emptied with a filling material for varying the weight of the hold down device. The container is a solid material of a sufficient weight for holding down the discharge hose during draining. The container is configured to vertically stack at least two containers (the containers could be stacked and secured by

a cord of some type) for added weight to hold down the discharge hose and to be stored by wrapping the discharge hose around the container. The handle (26) is integral with the top portion of the container and configured to allow the discharge hose to wrap around the handle for storing the hold down device. The hose recess is also configured to have a rear wall and receive the discharge hose between the right, left, upper and rear walls. The recess has openings on the front (at 36) and rear (at 32) ends of the container and is configured to receive the hose between the walls and a ground surface the bottom of the container rests on.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-14, 16-21, and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kihm in view of 4,416,396 to Ward. Kihm discloses a fill hole on the top portion of the container for filling and emptying the container with a filling material, as well as a plug (44) removably coupled to the fill hole for retaining the fill material within the container. Kihm fails to disclose feet coupled to the bottom portion of the container. Ward discloses a fuel dispensing container with a plurality of feet (13, 15, 17) for raising the container a desired distance above the support surface. it would have been obvious to one of ordinary skill in the art at the time of the present invention, to

have provided feet at the bottom of the container taught by Kihm, as taught by Ward, for the purpose of providing a means to raise the container a desired distance above a support surface. The feet would be configured to rest over a splash ring coupled to a sewer fitting. The feet are not disclosed as circular in shape, but the shape is a matter of design preference that would have been obvious to one of ordinary skill in the art at the time of the present invention as an aesthetic choice.

Response to Arguments

Applicant's arguments filed September 11, 2008 have been fully considered but they are not persuasive. In light of the interview conducted with Applicant where the above changes were suggested, this action has not been made final because the suggested changes do not overcome the Kihm reference as suggested by the Examiner.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Marsh whose telephone number is (571) 272-6819. The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30 PM. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 272-3600. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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/Steven M Marsh/

Examiner, Art Unit 3632

December 8, 2008

Application Number**Application/Control No.**

10/828,746

**Applicant(s)/Patent under
Reexamination**

KOCHANSKI, JEROME J.

Examiner

STEVEN M. MARSH

Art Unit

3632